

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

CARL MALONE

PLAINTIFF

v.

No. 3:22-cv-00035-NBB-JMV

COOKE INSURANCE CENTER, INC., ET AL.

DEFENDANTS

ORDER

This matter is before the court on Defendants' Motion to Compel [52]. Plaintiff filed a Response [55], and Defendants filed no reply. Defendants' Motion should be denied because it is untimely pursuant to Local Uniform Rule 7(b)(2)(C).

I. Background

Plaintiff filed his Complaint [1] in this Court against Defendants on February 28, 2022, alleging a violation of his rights under 42 U.S.C. § 1981. In the complaint, Plaintiff alleges that he was discriminated against on the basis of race in his dealings with Cooke Insurance Center, Inc., and its employees. *See* [1] at 3-9.

In the instant motion, Defendants assert – and Plaintiff admits in his Response – that Plaintiff took a video recording of the events of the alleged incident on August 10, 2021. Plaintiff now claims that he cannot retrieve the video from his phone, though there is no mention of what the issue is – whether the video file is corrupted, deleted, etc. There is also no accounting of efforts made by Plaintiff to recover the same video file.

The discovery deadline in this cause expired on November 21, 2022. Defendants filed their Motion to Compel [52] on November 30, 2022, nine days after the discovery deadline had passed. Plaintiff's Response [55] was filed December 14, 2022. No reply was filed by Defendants.

II. Analysis

Local Uniform Rule 7(b)(2)(C) requires that “[a] party must file a discovery motion sufficiently in advance of the discovery deadline to allow response to the motion, ruling by the court and time to effectuate the court’s order before the discovery deadline.” L.U. Civ. R. 7(b)(2)(C).

Here, this motion obviously could not have been fully briefed and decided prior to the discovery deadline, given it was filed after the deadline. Further, the defendants have not requested an extension of the discovery deadline nor undertake to establish the necessary factors for the court to grant such an extension. Accordingly, the motion to compel will be denied without prejudice to Defendants’ right to move for an extension of the discovery deadline.

III. Conclusion

IT IS, THEREFORE, ORDERED that, Defendants’ Motion to Compel is **DENIED**.

SO ORDERED, this the 9th day of January, 2023.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE